

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
CALIFORNIA ENDANGERED SPECIES ACT
INCIDENTAL TAKE PERMIT
NO. 2081-2018-057-02-A2**

Rancho Seco Solar II Project

CEQA FINDINGS

INTRODUCTION:

The California Department of Fish and Wildlife (CDFW) has prepared these findings to document its compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 *et seq.*). CDFW is a responsible agency under CEQA with respect to the Rancho Seco Solar II Project (Project) because of its permitting authority under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*). (See generally Pub. Resources Code, §§ 21002.1, subd. (d), 21069; CEQA Guidelines, § 15381; see also Cal. Code Regs., tit. 14, § 783.3, subd. (a).)¹ CDFW makes these findings under CEQA as part of its discretionary decision to authorize Rancho Seco Solar II LLC (Permittee) to incidentally take California tiger salamander (*Ambystoma californiense*) (hereafter, referred to as Covered Species) during implementation of the Project. (See generally Fish & G. Code, § 2081, subd. (b); Cal. Code Regs., tit. 14, § 783.4.) The California Tiger Salamander is designated as threatened species under CESA. (Cal. Code Regs., tit. 14, § 670.5, subd. (b)(3)(G))

CDFW is a responsible agency under CEQA with respect to the Project because of prior environmental review and approval of the Project by the lead agency, Sacramento Municipal Utility District (SMUD). (See generally Pub. Resources Code, § 21067; CEQA Guidelines, § 15367.) SMUD analyzed the environmental impacts associated with implementation of the Project in an Environmental Impact Report, the Rancho Seco Solar II Project (EIR) (SCH No. 2017092042) and approved the Project on October 18, 2018. In so doing, SMUD imposed various mitigation measures for impacts to the Covered Species as conditions of Project approval and concluded that Project-related impacts to the Covered Species could be substantially lessened with implementation of mitigation and avoidance measures, such that the impacts would be less than significant.

As approved by SMUD, the Project involves construction and operation of a new photovoltaic (PV) solar power facility and decommissioning and removal of an existing solar power facility. The Project encompasses approximately 554 acres comprised of the PV solar panels, inverters, a substation, switchyard, battery storage and interconnection to the existing transmission system. The Project site is within the range of the Covered Species and is known to support individuals of the species.

CDFW has accepted the Permittee's request for a minor amendment to the Incidental Take Permit (ITP) issued on August 6, 2019 and amended on December 18, 2020. The construction of the solar array portion of the Project, as described in ITP amendment #1,

¹ The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

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has been completed. As such, the Permittee is transitioning the site into long-term operations and fulfilling the mitigation obligations described in the amended ITP. Completion of the construction and ongoing work on the mitigation has prompted the need for further refinement of the amended ITP to facilitate operations and completion of the mitigation obligations. While Project activities are the same as those in the amended ITP, the Permittee has requested the amended ITP have an: 1) updated the Project Description, 2) a refinement of the Project's mitigation requirement considering efforts to decrease the Project's impact on the Covered Species, and 3) an updated mitigation timeframe to accommodate logistical complexities. Take of the species as defined by Fish and Game Code is still expected. (Fish & G. Code, § 86.) These impacts fall within CDFW's permitting jurisdiction under CESA. (*Id.*, §§ 2080, 2081, subd. (b).)

As a responsible agency, CDFW's CEQA obligations are more limited than those of the lead agency, in that CDFW is responsible for considering only the effects of those activities involved in the Project which it is required by law to carry out or approve. Thus, while CDFW must consider the environmental effects of the Project as set forth in SMUD's EIR, CDFW has responsibility to mitigate or avoid only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve. (Pub. Resources Code, § 21002.1, subd. (d); CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g).) Accordingly, because CDFW's exercise of discretion is limited to issuance of an ITP for the Project, CDFW is responsible for considering only the environmental effects that fall within its permitting authority under CESA. (See generally *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 935-941.) Indeed, with respect to all other effects associated with implementation of the Project, CDFW is bound by the legal presumption that the EIR fully complies with CEQA. (Pub. Resources Code, § 21167.3; *City of Redding v. Shasta County Local Agency Formation Commission* (1989) 209 Cal.App.3d 1169, 1178-1181; see also CEQA Guidelines, § 15096, subd. (e); Pub. Resources Code, § 21167.2; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1130.)

CDFW's more limited obligations as a responsible agency affect the scope of, but not the obligation to adopt, findings required by CEQA. Findings are required under CEQA by each public agency that approves a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment. (Pub. Resources Code, § 21081, subd. (a); CEQA Guidelines, § 15091, subd. (a); see also Pub. Resources Code, § 21068 (significant effect on the environment defined); CEQA Guidelines, § 15382.) Because the EIR certified by SMUD for the Project identifies potentially significant impacts on the Covered Species, CDFW adopts the findings set forth below to fulfill its obligations as a responsible agency under CEQA. (CEQA Guidelines, § 15096, subd. (h); *Resource Defense Fund. V. Local Agency Formation Comm. of Santa Cruz County* (1987) 191 Cal.App.3d 886, 896-898.)

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FINDINGS:

CDFW has considered the EIR adopted by SMUD as the lead agency for the Project.

CDFW finds that the mitigation measures imposed as conditions of Project approval by SMUD, along with the mitigation measures and Conditions of Approval set forth in CDFW's Amended ITP for the Project, will ensure that all Project-related impacts on the Covered Species are mitigated to below a level of significance under CEQA.

CDFW finds that issuance of the ITP will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, CDFW finds adherence to and implementation of the conditions of Project approval adopted by the lead agency, as well as adherence to and implementation of the Conditions of Approval imposed by CDFW through the issuance of the Amended ITP, will avoid or reduce such potential effects to below a level of significance.

The following measures and others set forth in CDFW's Amended ITP for the Project will avoid to the extent feasible and mitigate to below a level of significance all Project-related impacts on the Covered Species:

- A. A Designated Biologist who is knowledgeable and experienced in the biology and natural history of the Covered Species will monitor construction and/or surface-disturbing activities to minimize habitat disturbance and take of individual Covered Species. The Designated Biologist will have the authority to stop construction and/or surface-disturbing activities and/or order any reasonable measure to avoid take of the Covered Species.
- B. Orientation will be provided to construction staff to familiarize them with the conditions of the Permit and the measures to avoid and minimize impacts to the Covered Species.
- C. The Permittee will provide 949.409 acres of Covered Species habitat including 733.409 acres of credits at a CDFW-approved bank and preservation of 216 acres of Covered Species habitat approved by CDFW and providing for the maintenance and management of the habitat in perpetuity.
- D. Compliance monitoring will be reported monthly and annual reports will be sent to CDFW by January 31 of each year.
- E. Non-compliance will be reported to CDFW within 24 hours during the construction phase.

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- F. Covered Species found on the Project site shall be relocated by the Designated Biologist to a protected off-site location.
- G. Restoration of Project lands where temporary impacts occur will be monitored and the status included in Annual Reports beginning after completion of Phase 1 of the Project. Restoration of all areas subject to temporary ground- or vegetation disturbance shall be recontoured, as necessary, covered with stockpiled topsoil, and seeded with native species. Monitoring for two years post-construction of each Phase will ensure that native species are successfully reintroduced. If the temporary impacted lands have not returned to pre-Project conditions two years after completion of each Phase, additional mitigation and an amendment to the Project ITP may be required.
- H. Permittee will prepare and submit a final mitigation report within 60 days following completion of the Project to notify CDFW of the success and effectiveness of required mitigation measures.

CDFW finds that the Mitigation Monitoring and Reporting Program in Attachment 1 of CDFW's Amended ITP for the Project will ensure compliance with mitigation measures by requiring the Permittee to monitor and report progress in implementing those measures for review by CDFW staff.

The amended Mitigation Monitoring and Reporting Program is adopted.

The amended Project is approved.

DATE: 6/9/2021
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By:  _____
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Kevin Thomas, Regional Manager
NORTH CENTRAL REGION
DEPARTMENT OF FISH AND WILDLIFE